



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Special Attention of

Public Housing Agencies
Public Housing Hub Office Directors
Public Housing Program Center Directors
Regional Directors
Resident Management Corporations

Notice: PIH 2010-2 (HA)

Issued: January 20, 2010

Expires: January 31, 2011

Cross Reference:
Notice PIH 2009-47 (HA)

SUBJECT: Appeals under the Operating Fund Program for Calendar Year 2010

1. Purpose

This notice updates annual instructions to public housing agencies (PHAs) and field offices for appeals pursuant to 24 CFR part 990, the Public Housing Operating Fund Program, Subpart G, for calendar year (CY) 2010.

2. Types of Appeals

Section 990.245 establishes five types of appeals:

- a. Streamlined appeal: This appeal requires the PHA to demonstrate a blatant and objective flaw in the application of a specific Operating Fund formula component. For example, a geographic coefficient is identified with Springfield, IL, when it should be Springfield, MA.
- b. Appeal of formula income for economic hardship: This appeal is not applicable for CY 2010 since the frozen formula income provisions of 24 CFR § 990.195 have expired.
- c. Appeal for specific local conditions: This appeal requires the PHA to demonstrate that the model-generated project expense levels (PELs) fail to reflect specific local conditions. To be eligible, the affected PHA must demonstrate, by means of an independent cost assessment, that the formula-generated PEL is not accurate for comparable properties in the PHA's market area, with a variance of ten percent or greater.
- d. Appeal for changing market conditions: A PHA may appeal to receive operating subsidy for vacant units due to changing market conditions after the PHA has taken aggressive marketing and outreach measures to rent these units. The vacancies cannot be the result of action or inaction by PHA management. For example, a PHA located in an area experiencing extreme population loss or economic dislocations may have a shortage of applicants, even with PHA aggressive marketing and outreach.

- e. Appeal to substitute actual project cost data: A PHA may appeal PELs based on actual project cost data under an asset management period of at least two years as outlined in subpart H. For this type of appeal, the PHA must also submit an independent cost assessment.

3. Appeal Requirements

Pursuant to section 990.240, appeals are voluntary and cover the PHA's entire portfolio, not single projects. The Assistant Secretary for Public and Indian Housing (PIH), however, has the discretion to accept appeals of less than an entire portfolio for PHAs with greater than 5,000 public housing units. All other appeals must be based on an impact that affects the entire PHA, not an impact to a single project or set of projects and any appeals that address single projects and not the entire portfolio will be denied. .

For "specific local conditions" and "substitute actual project cost data" appeals, the PHA is to acquire, at its own expense, an independent cost assessment on each public housing project. The assessor must have appropriate knowledge of multifamily operating costs within the local market. The independent cost assessment includes:

- a. Comparable Data: Cited data must be verifiable by HUD with complete source identification. Itemized comparative data must include: locality, occupancy type, building type and PELs. (Refer to Public and Indian Housing *PIC Development Submodule User Manual*, pages 4 – 7, for definitions of building types.)
- b. Adjustments: Assessments must fully disclose any adjustments made to the comparative data, including the nature of the adjustment, the reason for the adjustment, the adjustment method and citation of source documents.
- c. Reporting: Assessments must present the entire PHA's portfolio in a table format and include the following for each individual project:
 - 1) Number of units;
 - 2) Occupancy type;
 - 3) Building type;
 - 4) Current PEL; and
 - 5) Appellant's suggested PEL.

Additionally, the PHA should include a table that presents the recommended unit-weighted average PEL for the entire public housing portfolio as compared with the unit-weighted average PEL assigned by HUD.

- d. For "substitute actual cost data" appeals, the appeal must include items a, b and c described above for independent cost assessments and:
 - 1) Two years of actual cost data, showing that PHA costs are not greater than costs at comparable properties in the PHA's local market; and
 - 2) Documentation certifying the PHA has completed transition to asset management pursuant to section 990.290.

4. Processing Requirements for CY 2010

For “streamlined” appeals, the PHA describes the flaw and submits supporting documentation to the address below. Appeals for “changing market conditions” are to be submitted and processed in SAGIS along with the PHA’s request for operating subsidy on form HUD 52723, Operating Fund Calculation of Operating Subsidy.

Appeals under the definitions for “streamlined”, “specific local conditions”, and “substitute actual project cost data” must be postmarked by May 14, 2010, and submitted to the address below. The PHA also must provide a copy of the appeal to the Public Housing Director of the appropriate field office.

HUD Office of Public and Indian Housing
Real Estate Assessment Center
Financial Management Division
550 12th St., SW, Washington, D.C., 20410
Attn: Peggy Mangum (telephone 202-475-8778)

For “streamlined” appeals, the PHA describes the flaw and submits supporting documentation to the above address. For “specific local conditions” and “actual project cost data” appeals, the PHA must include the independent cost assessment with its submission. In addition, HUD will contract with a second professional assessor who is familiar with property management practices and costs in the region or state in which the PHA is located, to review the initial assessment submitted by the PHA. This review and recommendation is forwarded to the Assistant Secretary for Public and Indian Housing (or designee) for final determination.

For CY 2010, final appeal decisions will be issued on or before September 30, 2010. If an appeal is granted, HUD adjusts the PHA’s subsidy by the appropriate amount retroactive to the beginning of the year.

5. Paperwork Reduction

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520) and assigned OMB approval number 2577-0246. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing